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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re Marriage of JULIE A. JUREK and ROBERT A. BOWMAN.	B164694 (Los Angeles County Super. Ct. No. BD 373546)
JULIE A. JUREK, Respondent, v. ROBERT A. BOWMAN, Appellant.	

APPEAL from a judgment of the Superior Court of Los Angeles County. John W. Ouderkirk, Judge. Affirmed; writ of supersedeas is discharged.

Robert A. Bowman, in pro. per., for Appellant.

Julie A. Jurek, in pro. per.; Trope and Trope, Thomas Paine Dunlap, and Susannah Braffman Amen for Respondent.

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On July 26, 2002, Julie A. Jurek filed a petition to dissolve her marriage with Robert A. Bowman. The dissolution proceedings have been stayed pursuant to our order of June 6, 2003, granting Bowman's petition for a writ of supersedeas. On or about July 31, 2002, Bowman filed a petition for an award of attorney's fees and spousal support pendente lite. This is an appeal by Bowman from orders denying his petitions for pendente lite spousal support and attorney's fees and granting Jurek's petition for restraining orders issued under the Domestic Violence Prevention Act (Fam. Code, § 6200 et seq.).[1]

Orders granting or denying pendente lite spousal support and attorney's fees are appealable. (*In re Marriage of Skelley* (1976) 18 Cal.3d 365, 368-369.) A restraining order entered under the Domestic Violence Prevention Act, which has the character of an order granting an injunction (see 6 Witkin, Cal. Procedure (4th ed. 1997) Provisional Remedies, § 317), is appealable as a collateral order. (Code Civ. Proc., § 904.1, subd. (a)(6); 2 Raye & Pierson, Cal. Civil Practice: Family Law Litigation (2002) Temporary Orders, § 11:68(6) (rel. 9/2003).) We affirm.

1. It Was Not an Abuse of Discretion To Deny Bowman's Petition for Attorney's Fees

"A motion for attorney fees and costs in a dissolution action is addressed to the sound discretion of the trial court, and in the absence of a clear showing of abuse, its determination will not be disturbed on appeal. [Citations.] The discretion invoked is that of the trial court, not the reviewing court, and the trial court's order will be overturned only if, considering all the evidence viewed most favorably in support of its order, no judge could reasonably make the order made." (*In re Marriage of Cueva* (1978) 86 Cal.App.3d 290, 296.)

In determining whether to award attorney's fees during the pendency of a proceedings for dissolution of marriage, Family Code section 2030, subdivision (a)

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1 On June 6, 2003, we entered an order dismissing appeals taken by Bowman from orders that are not appealable. We noted in our order that the three orders enumerated in the main text are the only orders from which Bowman can appeal at this juncture.

requires the court to take into account the respondent's ability to pay. (*In re Marriage of Keech* (1999) 75 Cal.App.4th 860, 867.) The award of attorney's fees under section 2030 must be ". . . just and reasonable under the relative circumstances of the respective parties." (Fam. Code, § 2032, subd. (a).)

The trial court denied Bowman's request for attorney's fees because of Jurek's inability to pay attorney's fees. The court decision was based on the facts that Jurek's current net monthly disposable income (*In re Marriage of Wolfe* (1985) 173 Cal.App.3d 889, 893 [fee determination is to be based on current relative circumstances]) as a Los Angeles County Deputy District Attorney II was $4,489 and her current total expenses were $4,543. The major items of expenses were $1,150 in rent, $1,687 in installment payments that include lease payments on a car and computer equipment, and $700 in transportation costs that include insurance, gas, oil and repairs.

"In determining what is just and reasonable under the relative circumstances, the court shall take into consideration the need for the award to enable each party, to the extent practical, to have sufficient financial resources to present the party's case adequately . . . ." (Fam. Code, § 2032, subd. (b).) This standard cannot be properly applied without factoring in the proposed obligor's ability to pay an attorney's fees award after payment of his or her other obligations and his or her own legal fees. (Hogoboom & King, Cal. Practice Guide: Family Law (The Rutter Group 2004) ¶ 14:157.1, p. 14-40 (rev. #1 2004).) Thus, in *In re Marriage of Keech*, *supra*, 75 Cal.App.4th at page 867, it was abuse of discretion to direct the husband to pay accountant's fees of $1,000 (later reduced to $500) per month, when the payment of $1,000 left husband with only $93 per month to live on, after having paid his rent. In the case at bar, even a very modest award of attorney's fees would have left Jurek unable to meet her obligations. The trial court took this into account, as it was required to do. The order denying fees was within the exercise of the court's sound discretion.

Without a single citation to the record, Bowman contends that Jurek has shares in a trust fund with a value of $1.5 million.

In our order of July 31, 2003, we called Bowman's attention specifically to rule 14 of the California Rules of Court and directed him to file a brief that conforms to rule 14 and other applicable rules. A brief *must* "support any reference to a matter in the record by a citation in the record." (Cal. Rules of Court, rule 14(a)(1)(C).)[2] When a brief fails to make appropriate references to the record in connection with points urged on appeal, the appellate court may treat those points as waived. (*City of Lincoln v. Barringer* (2002) 102 Cal.App.4th 1211, 1239.) A violation of rule 14(a)(1)(C) may result in the offending portions of the brief, or even the entire brief, being disregarded. (*Colt v. Freedom Communications, Inc.* (2003) 109 Cal.App.4th 1551, 1560.) We are therefore free to disregard Bowman's factual assertions that are not supported by references to the record.

We note at this juncture that, notwithstanding our specific directive to Bowman to file a brief that complies with rule 14 and other applicable rules of court, Bowman's brief, in addition to failing to cite to the record, is an exemplar of serial transgressions of rule 14. His opening brief, that is 25 pages long, is not paginated,[3] the points urged in the opening brief are not stated under headings summarizing each point,[4] there is no summary of significant facts limited to matters in the record,[5] the opening brief fails to state why the orders subject to this appeal are appealable,[6] the opening brief frequently fails to cite authority for propositions of law,[7] and the opening brief does not have a table of contents.[8] Bowman cannot claim that he is unable to read or understand rule 14 since

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2 All further references to rules are to the California Rules of Court.

3 Rule 14(b)(7).

4 Rule 14(a)(1)(B).

5 Rule 14(a)(2)(C).

6 Rule 14(a)(2)(B).

7 Rule 14(a)(1)(B).

8 Rule 14(a)(1)(A).

in 2003 he was a third-year law student at the Hastings College of Law. Moreover, the sophistication of the text of the opening and reply briefs makes it clear that Bowman is competent to submit a brief that complies with rule 14.

Without any citation to the record, Bowman claims that the "trial court refused to allow Appellant to introduce any evidence during the hearing."

Our independent review of the record on this issue discloses the following series of events.

Bowman, who represented himself during the November 4, 2002 hearing, was previously represented successively by attorneys Rawitch, Cohen and Kaplan, with Cohen substituting for Rawitch, and Kaplan substituting for Cohen on or about October 16, 2002. Bowman fired Kaplan on or about Monday, October 28, 2002.[9]

An emergency restraining order under the Domestic Violence Prevention Act was entered on August 2, 2002. The order directed Bowman to refrain from contacting, molesting, harassing, etc. Jurek, and to stay at least 200 yards away from her.

On September 13, 2002, Jurek filed her response, with evidentiary support, to Bowman's petition for attorney's fees and spousal support. On October 15, 2002, Bowman filed a declaration in response to Jurek's declaration of September 13, 2002.[10] Bowman's declaration addresses only the restraining order.

On October 16, 2002, attorney Kaplan contacted Jurek's counsel and told her that he was substituting in as Bowman's counsel in lieu of attorney Cohen and requested that the hearing re attorney's fees and spousal support, set for October 24, 2002, be continued to November 4, 2002. Jurek's counsel agreed but requested that Bowman sign a stipulation extending the restraining order. On October 24, 2002, Kaplan called Jurek's

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9 See main text, *post*.

10 In order to facilitate the mechanics of the appeal for Bowman, who is in propria persona, and to reduce his costs, we gave leave on July 31, 2002, for Bowman to rely in the appeal on the exhibits filed in support of his petition for a writ of supersedeas. Bowman's declaration of October 15, 2002, is not an exhibit to his petition, but it is contained in the superior court file.

counsel and requested another continuance of the hearing, which was now set for November 4, 2002.[11] Jurek's counsel advised Kaplan that Jurek had never received the stipulation agreeing to continue the restraining order. On October 28, 2002, Jurek's attorney received a voice mail message from attorney Kaplan in which Kaplan stated that Bowman would not sign the stipulation and that attorney Kaplan was substituting out of the case. On the same day, Jurek's counsel received a fax that indicated that Bowman was now in propria persona.

On or about October 29, 2002, Jurek's counsel filed a "Reply Declaration" that responds to Bowman's declaration of October 15, 2002. Jurek's Reply Declaration addresses issues that relate to the restraining order.

During the November 4, 2002 hearing, the trial court gave Bowman an opportunity to address the court on the question of attorney's fees and spousal support. Bowman inquired whether he was allowed to present evidence. The trial court stated: "No. You presented the evidence, now you go [*sic*] can argue from the evidence that's before the court." Bowman replied that he had just received "the documents" from attorney Kaplan last Wednesday (October 30, 2002) and did not have a chance to review them. Bowman was apparently referring to Jurek's Reply Declaration of October 29, 2002. The trial court replied that attorney Kaplan was going to continue the case, but that Bowman had declined to sign the stipulation regarding the restraining order. The court again stated that Bowman could argue from the evidence that was before the court. The court then stated that it appeared that Jurek had no ability to pay any spousal support and that it appeared from ". . . competent evidence that's been presented to me she has no ability to pay . . . so if you want to focus your argument there."

Bowman proceeded to make a series of comments about Jurek's car payments and the allegedly inflated payments on her credit cards. The court sustained an objection to the last argument and stated: "See, Mr. Bowman, you should have submitted a reply if

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11 Jurek's counsel represented during the hearing of November 4, 2002, that attorney Kaplan requested the continuance in order to file a responsive declaration.

you had additional evidence to present to the court." Bowman replied that he had just received "the documents." This remark did not respond to the court's statement that if Bowman wanted to present additional evidence, he should have filed a reply setting forth that evidence. The court stated: "Okay. This has been before me for a long time now. Your request for spousal support is denied. . . . And denial of the spousal support is based, at least at this point, on the inability of the petitioner to pay spousal support." A little later, Jurek's counsel stated that the court had not ruled specifically on the request for fees. The court replied that that ". . . request is denied at this point in time on the inability of the petitioner to pay the fees."

Jurek's evidence on the issues of fees and support was filed nearly two months before the November 4, 2002 hearing. It appears that Bowman filed a response to Jurek's declaration on October 15, 2002, and that Bowman was represented by counsel until October 28, 2002. Bowman had ample opportunity to reply to Jurek's September 13, 2002 submission. He did avail himself of that opportunity, although it appears that he limited his response to issues relating to the restraining order.

As far as presenting additional evidence is concerned, Bowman could not have it both ways. He could not refuse to sign a stipulation that Jurek's counsel reasonably demanded for the protection of his client in return for a continuance of the hearing, and then demand that the court allow him to present evidence at the hearing of November 4, 2002 -- evidence that Bowman should have presented in a responsive declaration prior to the hearing. In other words, Bowman could not forego the continuance to which his attorney and Jurek's counsel had agreed and, in the same breath, demand the right to present evidence on November 4, 2002, that he could have presented only at the *continued* hearing.

The orderly conduct of the hearing, including the presentation of evidence with adequate notice, is a matter within the control and discretion of the trial court. We find that the manner in which the trial court conducted the hearing, including the court's control over the presentation of evidence, was well within the scope of its discretion.

Indeed, the course of action adopted by the trial court was fair to both sides and ensured the orderly conduct of the proceedings.

Without citing the record, Bowman asserts that Jurek filed five income declarations with the court within one year and that these declarations endeavor to "reduce her net income and increase her gross expenses." Bowman states that "[a]pparently respondent's mantra is, if you don't get the deception right the first time, just try again." We are not required to search the record for these five declarations, nor are we required to compare them in order to validate, or invalidate, Bowman's claims. We are inclined to find, however, that Bowman's charge of "deception," which is without support in the record, is scandalous and abusive and could be grounds to strike Bowman's brief. (9 Witkin, Cal. Procedure, *supra*, Appeal, § 599 [statements that are scandalous, abusive or disrespectful to litigants may cause court to strike the brief from the files].)

Without citing the record, Bowman claims that Jurek's expenses are evidence of "luxurious living." Were we sitting as the trier of fact, we would not find Jurek's expenses to be evidence of luxurious living. However, we are not the trier of fact and review the trial court's determination for an abuse of discretion. Finding none, we find Bowman's contention to be without merit.

"Abuse of discretion [in granting or refusing fees] is never presumed but must be affirmatively established in order to justify interference by an appellate court." (*Price v. Price* (1963) 217 Cal.App.2d 1, 10.) Bowman's efforts fall far short of showing an abuse of discretion on the part of the trial court. For that reason, we affirm the court's order denying Bowman's petition for attorney's fees.

2. It Was Not an Abuse of Discretion To Deny Bowman Spousal Support

A trial court's order regarding support is reviewed for an abuse of discretion. (*In re Marriage of Ostler & Smith* (1990) 223 Cal.App.3d 33, 50; Hogoboom & King, Cal. Practice Guide: Family Law, *supra*, ¶ 16.208.2, p. 16-22 (rev. #1 2004).) Among the mandatory circumstances set forth in Family Code section 4320 to be considered on the

issue of support, a "key factor" is the supporting party's "ability to pay" (§ 4320, subd. (c)). (*In re Marriage of Cheriton* (2001) 92 Cal.App.4th 269, 304.)

As noted, the trial court found that Jurek did not have the ability to pay spousal support. Jurek's actual earnings and expenses fully support this finding.

Bowman contends that the trial court abused its discretion when it did not permit the introduction of evidence during the hearing on November 4, 2002, on the issue of spousal support. As shown in part 1 of this opinion, this contention is misplaced.

Without citing the record, Bowman claims that he and Jurek had an agreement under which Jurek agreed to support him while he was in law school. We disregard this contention because of Bowman's failure to observe rule 14(a)(1)(C) of the California Rules of Court. In any event, any such agreement is not material since the obligation to support, to the extent it exists, is imposed by law and not by contract.

Bowman also complains of the fact that the court considered Jurek's Reply Declaration of October 29, 2002. He points out that this declaration was served two days prior to the hearing date.

Attorney Kaplan contacted Jurek's counsel on October 16, 2002, and secured a continuance of the hearing from October 24, 2002, to November 4, 2002, on the representation that Bowman would stipulate to extend the restraining order. Kaplan requested a further continuance on October 24, which was granted, subject to Bowman signing the stipulation. Bowman never did so and discharged Kaplan on October 28.[12] Bowman's own actions in refusing to sign the stipulation and discharging Kaplan left Jurek's counsel with no choice other than to file the Reply Declaration since, contrary to the expectations of counsel for both sides and solely due to Bowman, the hearing of November 4, 2002, was not being continued. Bowman himself created the situation of which he complains.

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12 Bowman either discharged Kaplan or insisted on a course of action that was unacceptable to Kaplan, which had the same effect as discharging him. Nothing else explains Kaplan's precipitate withdrawal from the case in the midst of negotiating a continuance of the hearing.

In any event, the record reflects that the trial court recessed the hearing of November 4, 2002, to give Bowman an opportunity to read and review the Reply Declaration. Thus, it appears that the trial court did what it could to save Bowman from the consequences of Bowman's own actions. In doing so, however, the trial court was not required to act unfairly toward Jurek in entertaining new evidence that had not been submitted prior to the hearing. In any event, there was never a showing what that new evidence regarding spousal support might have been.

The trial court was required to, and did, take account of Jurek's inability to pay spousal support. The order denying such support was within the exercise of the court's sound discretion.

3. It Was Not an Abuse of Discretion To Order Bowman Not To Harass Jurek and To Stay Away from Her

After notice and hearing, a court may issue any of the orders described in Family Code section 6320 et seq. (Fam. Code, § 6340, subd. (a).) In this case, the court issued an order after notice and a hearing that enjoined Bowman from contacting, molesting, etc. Jurek and to stay away from her, which is an order authorized under Family Code section 6320.[13]

The court based its decision to issue the order on communications that Bowman admitted sending and which the court correctly concluded were threatening. In one E-mail, Bowman stated that he would have to disclose "more documents" about Jurek. The context of this was that Jurek was one of the prosecutors on the Winona Ryder case and the National Enquirer had indicated that it would run an article involving Jurek and the Ryder case. A more explicit E-mail that stated that Jurek's "'background issues'" would

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[13] Family Code section 6320 provides: "The court may issue an ex parte order enjoining a party from molesting, attacking, striking, stalking, threatening, sexually assaulting, battering, harassing, telephoning, including, but not limited to, annoying telephone calls as described in Section 653m of the Penal Code, destroying personal property, contacting, either directly or indirectly, by mail or otherwise, coming within a specified distance of, or disturbing the peace of the other party, and, in the discretion of the court, on a showing of good cause, of other named family or household members."

be "'in the press in very short order'" followed. These E-mails were sent on August 26 and 30, 2002, after the issuance of the temporary restraining order on August 2, 2002. The court also took into consideration that Bowman had obtained Jurek's telephone number and bank account information through a private investigator, after Jurek had taken explicit steps to keep this information from Bowman. The court also had before it a declaration from an attorney who had represented Jurek which detailed physically threatening conduct by Bowman in court on August 1, 2002, prior to the hearing on Bowman's request for spousal support. Jurek's declaration which detailed repeated instances of physical abuse was also before the court. The trial court concluded that this was ". . . all conduct that's consistent with somebody who is an abuser. I am issuing the permanent restraining order."

We agree with the order entered by the trial court. However, the standard on appeal is not whether we would enter the same order but whether the order entered was an abuse of discretion. (2 Raye & Pierson, Cal. Civil Practice: Family Law Litigation, *supra*, Temporary Orders, § 11:68; *Pro-Family Advocates v. Gomez* (1996) 46 Cal.App.4th 1674, 1680 [order granting preliminary injunction is reviewed for abuse of discretion].) The order clearly was not an abuse of discretion but was fully supported by the evidence which we are required to construe in the light most favorable to the trial court's decision. (*Pro-Family Advocates v. Gomez*, *supra*, at p. 1680.)

Bowman contends without a citation of authority[14] that the "general evidentiary rule for the issuance of a permanent restraining order under the Domestic Violence Protection Act is that the trial court must find by a preponderance of the evidence" (emphasis omitted) that he posed an "imminent threat" to Jurek. This is an incorrect statement of the law. (See *Pro-Family Advocates v. Gomez*, *supra*, 46 Cal.App.4th at p. 1680.)

Bowman states he was denied a "full adversarial hearing" because the trial court refused to allow Bowman to "examine" Jurek. The decision to enter a permanent

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14 This is a violation of rule 14(a)(1)(B).

restraining order was based principally on threatening E-mails and other threatening conduct by Bowman which he admitted that he engaged in. Jurek added nothing to these facts. There was no reason to examine her.

4. Further Violations of the Rules of Court in Any Subsequent Proceedings in this Court Will Lead to Sanctions Under Rule 14(e)

We have not imposed sanctions on Bowman for the multiple violations of rule 14 of the California Rules of Court since he is not a member of the bar and since it appeared advisable to bring the current proceedings to a conclusion. However, violations of the rules of court in any future proceedings in this court may be dealt with in accordance with rule 14(e).

DISPOSITION

The orders denying attorney's fees and spousal support, and the permanent restraining order, is affirmed. The writ of supersedeas is discharged. Respondent is to recover her costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

FLIER, J.

We concur:

COOPER, P.J.

BOLAND, J.